



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0893]

RIN 1625-AA87

### Security Zone for Navy Diving Exercise; Gastineau Channel, Juneau, AK

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary security zone for certain waters of the Gastineau Channel. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by a Navy diving exercise involving remotely operated vehicles (ROVs) and accompanying divers on these navigable waters between the Juneau-Douglas Bridge and Savikko Park near Juneau, AK, from March 6, 2022, through March 17, 2022. This regulation prohibits persons and vessels from being in the security zone unless authorized by the Captain of the Port Southeast Alaska or a designated representative.

**DATES:** This rule is effective from March 6, 2022, through March 17, 2022.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0893 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Jesse Collins, Waterways Management Division, U.S. Coast Guard; telephone 907-463-2846, email [Jesse.O.Collins@uscg.mil](mailto:Jesse.O.Collins@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

COTP	Captain of the Port Southeast Alaska
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
ROV(s)	Remotely Operated Vehicle(s)
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Department of Navy notified the Coast Guard that it will be conducting a diving exercise from 6 a.m. to 6 p.m., each day from March 6, 2022, through March 17, 2022, along the entire length of the Gastineau Channel. Hazards associated with the exercise include collision and damage to remotely operated vehicles (ROVs) and collision and injury to divers in the water. In response, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Security Zone for Navy Diving Exercise; Gastineau Channel, Juneau, AK” (87 FR 6450). We stated there why we issued the NPRM and invited comments on our proposed regulatory action related to this diving exercise. During the comment period that ended February 14, 2022, we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with this diving exercise.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with the diving exercise will be a safety concern for anyone within a 200-yard radius of the Navy vessel displaying the Alpha (“Dive”) flag in the Gastineau Channel. The

purpose of this rule is to ensure safety of vessels and the navigable waters in the security zone before, during, and after the scheduled event.

#### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received no comments on our NPRM published on February 4, 2022. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a security zone from March 6, 2022, through March 17, 2022. The security zone will cover all navigable waters within 200 yards of a Navy vessel displaying the Alpha (“Dive”) flag in the Gastineau Channel. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the diving exercise. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and time of day of the security zone. Traffic is limited during the time of year when the security zone will be in effect. As a moving security zone assigned to a Navy vessel rather than a defined area of water, the impact to the waterway will be minimized. Moreover, the

Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a security zone lasting 12 hours for twelve days that will prohibit entry within 200 yards of a Navy vessel displaying the Alpha (“Dive”) flag in the Gastineau Channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T17-0893 to read as follows:

**§ 165.T17-0893 Security Zone for Navy Diving Exercise; Gastineau Channel, Juneau, AK.**

(a) Location. The following area is a security zone: All the waters in Juneau Harbor and along the Gastineau Channel within a 200-yard radius of a Navy vessel displaying the Alpha (“Dive”) flag.

(b) Definitions. As used in this section:

(1) Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Juneau.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Southeast Alaska to assist in enforcing the security zone described in paragraph (a) of this section.

(c) Regulations. (1) Under the general security zone regulations in subpart D of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP’s designated representative. All vessels underway within this security zone at the time it is activated are to depart the zone.

(2) To seek permission to enter, contact the COTP or the COTP’s designated representative by telephone at 907-463-2980 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF-FM channel 16 (156.8 MHz).

(3) Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP’s designated representative.

(d) Enforcement officials. The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) Enforcement period. This section is effective from March 6, 2022, through March 17, 2022, but will only be subject to enforcement from 6 a.m. to 6 p.m. each day.

**Dated:** February 25, 2022.

**D. A. Jensen,**

*Captain, U.S. Coast Guard,*

*Captain of the Port Southeast Alaska.*

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